



Docket No. CHMP-102D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kenneth A. Pieroni, et al. )  
Serial No.: 09/939,405 ) Examining Attorney:  
Filing Date: August 27, 2003 ) Charles D. Garber  
Title: SMOKE AND CLEAN AIR )  
GENERATING MACHINE FOR )  
DETECTING THE PRESENCE )  
OF LEAKS IN A FLUID SYSTEM )  
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)

**NOTICE OF APPEAL**

Box: AF  
Assistant Commissioner of Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Official Office Action date July 27, 2005, the applicants in the above-identified patent application hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of Claims 29 and 32-34. A check for the appeal fee of \$250.00 pursuant to 37 CFR 41.20(b)(1) is attached. Should any additional fee be required in this matter, it is requested that such fee be charged to Deposit Account No. 08-1310.

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depend therefrom, are patentable over any reasonable and accurate interpretation of Westervelt, et al. in combination with other patents cited in the Final Rejection.

More specifically, Independent Claim 29 (as amended on July 15, 2005) recites the step of:

visually observing the ball position of the gas flow meter with the gas supply line and the gas flow meter connected to the closed and pressurized fuel vapor recovery system under test to provide an indication of the size of the leak thereof ...

In other words, the applicants' gas flow meter is connected to a fuel vapor recovery system under test to provide an indication of the size of a leak formed therein. A careful inspection of the teachings of Westervelt reveals that a flow meter (17) described therein is used to provide an indication of pressure drop for the purpose of calibrating the test equipment prior to testing. In fact, the flow meter of Westervelt is not used during actual testing. Therefore, it is important to recognize that the applicants' claimed method requires that a flow meter and a gas supply line (to which an inert gas is supplied) be connected to the system under test so that a visual indication of the size of a leak will be provided. On the other hand, the flow meter of Westervelt is only used for calibrating the test apparatus to set accept/reject limits. At no time is the flow meter of Westervelt indicated to be connected to provide a visual indication of the size of a leak in a system under test.

What is more, it is highly doubtful that the comparator system of Westervelt would be used by those skilled in the art to test for leaks in the highly explosive environment around a fuel vapor recovery system of a motor vehicle regardless of the flow meter of Westervelt and the function thereof. More particularly, the electrical modules used by Westervelt are shown and

described as being powered by 110 volts (see, for example, FIG. 5). Such a relatively high 110 volt operating system and the solenoids, electrical switches, socketed lamps, and master relay controlled thereby and specifically taught by Westervelt are known to be unsafe in an explosive environment because of the potential for arcing. Moreover, the cabinet described by Westervelt is of "monoque construction," such that all of these electrical devices are arranged in close proximity to one another so as to pose a high risk of explosion should gases from the system under test vent into the cabinet (see, for example, column 2, lines 40-46). Accordingly, without a complete redesign and reinvention thereof, the comparator system shown and described by Westervelt would likely be avoided by those of reasonable skill when a method of reduced risk is desired to test for the presence of leaks in a fuel vapor recovery system in a potentially hazardous and explosive environment like that claimed by the applicants.

Accordingly, following this pre-appeal brief review, it is requested that Westervelt be withdrawn as a reference against the patentability of Independent Claim 29 pending in this application and that the Examiner's final rejection of Independent Claim 29 (and Dependent Claims 32-34) be reversed.

Respectfully submitted



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Dated

Respectfully submitted

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October 27, 2005

Dated